EXHIBIT L

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

PRIDDIS MUSIC, INC.,

Plaintiff/Counterclaim-Defendant,

-against-

TRANS WORLD ENTERTAINMENT CORPORATION,

Defendant/Counterclaim-Plaintiff.

Civil No. 05-CV-0491 (DNH/DRH)

ANSWER & COUNTERCLAIM

ANSWER

In answer to the complaint of the plaintiff in the above-captioned matter, Priddis Music, Inc. ("Priddis"), the defendant, Trans World Entertainment Corporation ("TWEC"), by and through its attorneys, based upon personal knowledge as to its own actions and intent and upon information and belief as to the actions and intent of others, avers as follows:

I. PARTIES

1. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 1 as they relate to any other person or entity.

2. Admits the averments of paragraph 2.

3. Admits the averments of paragraph 3.

4. Admits the averments of paragraph 4.

II. JURISDICTION AND VENUE

5. States that the averments of paragraph 5 purport to state a legal conclusion and do not require a response.

6. States that the averments of paragraph 6 purport to state a legal conclusion and do not require a response.

III. NATURE OF THE ACTION

7. States that the averments of paragraph 7 do not require a response, except states that the Court's August 26, 2005 Order dismissed Plaintiff's claims for fraud, breach of the implied covenant of good faith and fair dealing, and conversion.

IV. GENERAL ALLEGATIONS

8. Denies the averments of paragraph 8, except admits that TWEC did not do business with Priddis prior to 1999.

9. Denies the averments of paragraph 9, except admits that prior to TWEC's relationship with Priddis, TWEC carried karaoke products manufactured by Sound Choice.

10. Denies the averments of paragraph 10.

11. Denies the averments of paragraph 11, except refers to the referenced document for its contents.

12. Denies the averments of paragraph 12, except refers to the referenced document for its contents.

13. Denies the averments of paragraph 13, except refers to the referenced document for its contents.

14. Denies the averments of paragraph 14.

15. Denies the averments of paragraph 15, except states that TWEC is without information sufficient to form a belief as to the truth of the averments regarding the financial condition of Priddis or its position.

16. Denies the averments of paragraph 16, except refers to the contents of the Buy Out Agreement and the Display Agreement.

17. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 17.

18. Denies the averments of paragraph 18, except refers to the referenced document for its contents.

19. Denies the averments of paragraph 19, except refers to the referenced document for its contents.

20. Denies the averments of paragraph 20, except refers to the referenced document for its contents.

21. Denies the averments of paragraph 21, except states that TWEC is without information sufficient to form a belief to as to the truth of the averment of the second sentence, and further refers to the referenced document for its contents.

22. Denies the averments of paragraph 22, except refers to the referenced document for its contents.

23. Denies the averments of paragraph 23, except refers to the referenced document for its contents.

24. Denies the averments of paragraph 24, except states that TWEC is without sufficient information or knowledge to form a belief as to the truth of the averment of any "substantial investment."

25. Denies the averments of paragraph 25, except states that TWEC is without sufficient information or knowledge to form a belief as to the truth of the averments as they relate to Priddis.

26. Denies the averments of paragraph 26, except refers to the referenced document for its contents.

27. Denies the averments of paragraph 27, except refers to the referenced document for its contents and states that TWEC is without information sufficient to form a belief as to the truth of the averments as they relate to Priddis.

28. Denies the averments of paragraph 28, except refers to the referenced documents for their contents.

29. Denies the averments of paragraph 29, except states that TWEC is without information sufficient to form a belief as to the truth of the averments as they relate to Priddis.

30. States that the averments of paragraph 30 do not require a response, pursuant to the Court's August 26, 2005 Order.

31. States that the averments of paragraph 31 do not require a response, pursuant to the Court's August 26, 2005 Order.

32. States that the averments of paragraph 32 do not require a response, pursuant to the Court's August 26, 2005 Order.

33. Admits the averments of paragraph 33.

34. States that the averments of paragraph 34 do not require a response, pursuant to the Court's August 26, 2005 Order.

35. States that the averments of paragraph 35 do not require a response, pursuant to the Court's August 26, 2005 Order.

36. Denies the averments of paragraph 36.

37. Denies the averments of paragraph 37.

A. TWEC's Alleged Fraudulent Return Schemes

38. States that the averments of paragraph 38 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

39. States that the averments of paragraph 39 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except states that TWEC is without information sufficient to form a belief as to the truth of the averments in the second sentence.

40. States that the averments of paragraph 40 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments.

41. States that the averments of paragraph 41 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments

42. States that the averments of paragraph 42 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

43. States that the averments of paragraph 43 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

44. States that the averments of paragraph 44 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments and refers to the referenced document for its contents.

45. States that the averments of paragraph 45 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

46. States that the averments of paragraph 46 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

47. States that the averments of paragraph 47 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that TWEC has maintained a "Basic Program."

48. States that the averments of paragraph 48 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

49. States that the averments of paragraph 49 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

50. States that the averments of paragraph 50 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

51. States that the averments of paragraph 51 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

52. States that the averments of paragraph 52 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

53. States that the averments of paragraph 53 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments.

54. States that the averments of paragraph 54 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

55. States that the averments of paragraph 55 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

B. TWEC's Alleged Fraudulent Discount Schemes

56. States that the averments of paragraph 56 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC refers to the referenced document for its contents.

57. States that the averments of paragraph 57 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

58. States that the averments of paragraph 58 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

59. States that the averments of paragraph 59 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

60. States that the averments of paragraph 60 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

61. States that the averments of paragraph 61 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

62. States that the averments of paragraph 62 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that TWEC sent Priddis a document called "Check Overflow Remittance Advice."

63. States that the averments of paragraph 63 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

64. States that the averments of paragraph 64 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

65. States that the averments of paragraph 65 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

66. States that the averments of paragraph 66 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

67. States that the averments of paragraph 67 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that TWEC is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

68. States that the averments of paragraph 68 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

69. States that the averments of paragraph 69 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

70. States that the averments of paragraph 70 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

71. States that the averments of paragraph 71 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

C. **TWEC's Alleged Fraudulent Proof-of-Delivery Scheme**.

72. States that the averments of paragraph 72 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

73. States that the averments of paragraph 73 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that TWEC has used a computerized system in receiving product.

74. States that the averments of paragraph 74 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

75. States that the averments of paragraph 75 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

76. States that the averments of paragraph 76 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

77. States that the averments of paragraph 77 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

78. States that the averments of paragraph 78 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

79. States that the averments of paragraph 79 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

D. TWEC's Alleged Fraudulent Misrepresentations

80. States that the averments of paragraph 80 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except admits that Priddis periodically withheld shipments.

81. States that the averments of paragraph 81 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

82. States that the averments of paragraph 82 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

83. States that the averments of paragraph 83 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that TWEC is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

84. States that the averments of paragraph 84 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

85. States that the averments of paragraph 85 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

86. States that the averments of paragraph 86 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

87. States that the averments of paragraph 87 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments.

88. States that the averments of paragraph 88 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

89. States that the averments of paragraph 89 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC states that it is without information sufficient to form a belief as to the truth of the averments regarding any other entity or person.

90. States that the averments of paragraph 90 do not require a response, pursuant to the Court's August 26, 2005 Order. To the extent a response is required, TWEC denies the averments, except refers to the referenced document for its contents.

E. TWEC's Alleged Improper Imposition of a "Rack Placement" Fee

91. Denies the averments of paragraph 91, except refers to the referenced document for its contents.

92. Denies the averments of paragraph 92, except refers to the referenced document for its contents.

93. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 93, except refers to the referenced document for its contents.

94. Denies the averments of paragraph 94, except refers to the referenced document for its contents.

95. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 95.

96. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 96, except states that the last sentence purports to state a legal conclusion, which does not require a response.

97. Denies the averments of paragraph 97, except admits that TWEC raised the rack placement fee and states that the last sentence purports to state a legal conclusion, which does not require a response.

98. Denies the averments of paragraph 98.

F. TWEC's Alleged Improper Refusal to Pay for Express Shipping Costs

99. Admits the averments of paragraph 99.

100. Denies the averments of paragraph 100.

101. Denies the averments of paragraph 101.

102. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 102.

103. Denies the averments of paragraph 103.

104. Denies the averments of paragraph 104.

G. Priddis's Attempts to Mitigate

105. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 105.

106. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 106.

107. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 107.

108. Denies the averments of paragraph 108.

109. Denies the averments of paragraph 109.

110. Denies the averments of paragraph 110.

111. Denies the averments of paragraph 111, except refers to the referenced document for its contents.

112. Denies the averments of paragraph 112, except refers to the referenced document for its contents.

113. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 113.

114. Denies the averments of paragraph 114.

115. Denies the averments of paragraph 115.

116. Denies the averments of paragraph 116, except states that Priddis has refused to honor purchase orders from TWEC for new shipments of goods, from in or about February 2004 to present.

117. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 117.

118. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 118, except states that the second half of the sentence purports to state legal conclusions, which do not require a response.

119. States that TWEC is without information sufficient to form a belief as to the truth of the averments of paragraph 119, except denies that TWEC owes Priddis monies.

120. Denies the averments of paragraph 120.

FIRST CAUSE OF ACTION

121. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 120 as if fully set forth herein.

122. States that the averments of paragraph 122 do not require a response, pursuant to the Court's August 26, 2005 Order.

123. States that the averments of paragraph 123 do not require a response, pursuant to the Court's August 26, 2005 Order.

124. States that the averments of paragraph 124 do not require a response, pursuant to the Court's August 26, 2005 Order.

125. States that the averments of paragraph 125 do not require a response, pursuant to the Court's August 26, 2005 Order.

126. States that the averments of paragraph 126 do not require a response, pursuant to the Court's August 26, 2005 Order.

127. States that the averments of paragraph 127 do not require a response, pursuant to the Court's August 26, 2005 Order.

128. States that the averments of paragraph 128 do not require a response, pursuant to the Court's August 26, 2005 Order.

129. States that the averments of paragraph 129 do not require a response, pursuant to the Court's August 26, 2005 Order.

130. States that the averments of paragraph 130 do not require a response, pursuant to the Court's August 26, 2005 Order.

SECOND CAUSE OF ACTION

131. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 130 as if fully set forth herein.

132. Denies the averments of paragraph 132, except admits that TWEC and Priddis entered into the Buy Out Agreement, Display Agreement, and Vendor Agreement, and refers to the referenced documents for their contents.

133. Denies the averments of paragraph 133, except states that the Buy Out Agreement, Display Agreement, and Vendor Agreement are valid and enforceable contracts, and refers to the referenced documents for their contents.

134. Denies the averments of paragraph 134.

135. Denies the averments of paragraph 135.

136. Denies the averments of paragraph 136.

137. Denies the averments of paragraph 137.

138. Denies the averments of paragraph 138.

THIRD CAUSE OF ACTION

139. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 138 as if fully set forth herein.

140. States that the averments of paragraph 140 do not require a response, pursuant to the Court's August 26, 2005 Order.

141. States that the averments of paragraph 141 do not require a response, pursuant to the Court's August 26, 2005 Order.

142. States that the averments of paragraph 142 do not require a response, pursuant to the Court's August 26, 2005 Order.

143. States that the averments of paragraph 143 do not require a response, pursuant to the Court's August 26, 2005 Order.

144. States that the averments of paragraph 144 do not require a response, pursuant to the Court's August 26, 2005 Order.

FOURTH CAUSE OF ACTION

145. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 144 as if fully set forth herein.

146. Denies the averments of paragraph 146.

147. Denies the averments of paragraph 147.

148. Denies the averments of paragraph 148.

149. Denies the averments of paragraph 149.

150. Denies the averments of paragraph 150.

FIFTH CAUSE OF ACTION

151. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 150 as if fully set forth herein.

152. Admits the averments of paragraph 152.

153. Denies the averments of paragraph 153.

154. Denies the averments of paragraph 154.

155. Denies the averments of paragraph 155, except states that the last half of the sentence purports to state a legal conclusion, which does not require a response.

SIXTH CAUSE OF ACTION

156. Repeats and realleges TWEC's answers to the averments contained in paragraphs 1 through 155 as if fully set forth herein.

157. States that the averments of paragraph 157 do not require a response, pursuant to the Court's August 26, 2005 Order.

158. States that the averments of paragraph 158 do not require a response, pursuant to the Court's August 26, 2005 Order.

159. States that the averments of paragraph 159 do not require a response, pursuant to the Court's August 26, 2005 Order.

160. States that the averments of paragraph 160 do not require a response, pursuant to the Court's August 26, 2005 Order.

PRAYER FOR RELIEF

States that the enumerated paragraphs 1–5 following Priddis's prayer for relief, contain a request for relief for which no response is required. To the extent a response is required, TWEC denies that Priddis is entitled to the requested relief.

GENERAL DENIAL

TWEC denies each averment contained in the Complaint that is not specifically admitted.

AFFIRMATIVE DEFENSES

First Defense

The Complaint fails to state a cause of action upon which relief can be granted.

Second Defense

Priddis's claims are barred because TWEC has not engaged in any unlawful or unfair business practice, and because TWEC's conduct was performed in the exercise of an absolute right, proper and/or justified.

Third Defense

Priddis's claims are barred by the doctrines of waiver, estoppel, and unclean hands.

Fourth Defense

Priddis has failed, either in whole or part, to mitigate its alleged damages.

WHEREFORE, the defendant, TWEC, prays that this Court enter judgment in favor of TWEC and against the plaintiff, Priddis, dismissing the Complaint with prejudice and granting such other and further relief as the Court deems just and proper, including costs, disbursements, and attorneys' fees.

COUNTERCLAIM

For its counterclaim herein, the counterclaim-plaintiff, Trans World Entertainment Corporation ("TWEC"), by and through its attorneys, upon personal knowledge as to its own actions and upon information and belief as to the actions of the counterclaim-defendant, Priddis Music, Inc. ("Priddis"), avers as follows:

NATURE OF COUNTERCLAIM

This counterclaim arises from Priddis's wrongful refusals (i) to accept goods for return from TWEC and (ii) to honor purchase orders from TWEC for new shipments of goods, such refusals being in violation of valid agreements between the parties, which at all relevant times were in effect and provided TWEC the right to return product to Priddis, to submit purchase orders to Priddis for new shipments of product, and to expect those purchase orders to be filled on a timely basis.

PARTIES

1. TWEC is a New York corporation with its principal place of business in Albany, New York.

2. Priddis is a Nevada corporation with its principal place of business in Lindon, Utah.

JURISDICTION

3. This Court has jurisdiction over TWEC's counterclaim pursuant to 28 U.S.C. § 1332(a)(1). The parties have complete diversity of citizenship, and the amount in controversy exceeds $75,000, exclusive of interests and costs.

BACKGROUND

4. TWEC is a specialty music and video retailer that currently operates over 800 stores in 26 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. TWEC also operates a retail web site at www.fye.com.

5. TWEC operates its national mall-based portfolio under the brand name FYE, For Your Entertainment; the portfolio also includes select Saturday Matinee movie stores. TWEC's freestanding stores include Wherehouse Music, Coconuts Music & Movies, Strawberries, Spec's, CD World, Streetside Records, and Planet Music.

6. TWEC offers a wide selection of entertainment products, including CDs, DVDs, prerecorded audio- and video-cassettes, and related accessories.

7. Priddis manufactures and markets karaoke music products.

8. In 1999, TWEC discontinued its business relationship with Sound Choice, the company that had been supplying karaoke products to TWEC.

9. On or about May 25, 1999, Priddis offered to "buy out" the existing Sound Choice product that TWEC had on hand, and replace it with Priddis's karaoke product and display racks. TWEC accepted the offer. This agreement, referred to as the Buy Out Agreement, also set forth various pricing and payment terms.

10. On or about June 7, 1999, TWEC and Priddis executed a "Vendor Approval Request Form." This agreement, referred to as the Vendor Agreement, set forth certain other terms under which the parties agreed to operate. The Vendor Agreement provides, among other things, that TWEC's orders were "100% Returnable, no exceptions."

11. Effective October 1, 1999, TWEC and Priddis also executed a "Point of Sale Display Agreement." This agreement, referred to as the Display Agreement, set forth the terms and conditions related to the display racks that held the karaoke product.

12. In connection with the proper exercise of its rights, and in the normal course of business, TWEC returned product to Priddis on a number of occasions

beginning in or about May 1999 and periodically thereafter until some time in or about February 2004. During that time, Priddis accepted all shipments of returned product from TWEC.

13. On or about March 4, 2004, TWEC returned two skids of product containing sixty-three cartons each (the "returned product") to Priddis.

14. On or about March 6, 2004, Priddis refused to accept the returned product, which TWEC had shipped to Priddis in good faith and at TWEC's own expense and only after Priddis, via e-mail on or about February 23, 2004, had issued a return authorization ("RA") for the product.

15. From in or about February 2004 to the present, Priddis has wrongfully and unreasonably refused to accept any return of product from TWEC.

16. From in or about February 2004 to the present, Priddis has wrongfully and unreasonably refused to honor purchase orders from TWEC for new shipments of goods.

17. As a direct and proximate result of Priddis's wrongful and unreasonable refusal to accept product returned to Priddis by TWEC under the Agreements and to honor purchase orders from TWEC for new shipments of goods, TWEC has suffered substantial immitigable damages.

COUNTERCLAIM

18. TWEC repeats and realleges the averments in paragraphs 1 through 18, as if fully set forth fully herein.

19. TWEC and Priddis entered into the Buy Out Agreement, Vendor Agreement, and Display Agreement (collectively, the "Agreements"), all of which are valid contracts.

20. TWEC has performed all its duties and obligations under the Agreements.

21. Priddis has breached its express and/or implied duties and obligations under the Agreements by, among other things, refusing to accept the return of product from TWEC and refusing to honor purchase orders from TWEC for new shipments of goods.

22. Priddis has also breached the implied covenant of good faith and fair dealing under the Agreements by affirmatively seeking, through numerous acts of bad faith, to deprive TWEC of the benefits to which it is entitled under the Agreements.

23. As a direct and proximate result of Priddis's breaches of the Agreements and of covenants and/or duties implied under law, TWEC has suffered damages in an amount to be determined at trial.

PRAYER FOR RELIEF

WHEREFORE, the counterclaim-plaintiff, TWEC, prays that this Court enter judgment on the counterclaim in favor of TWEC and against the counterclaim-defendant, Priddis:

1. awarding TWEC compensatory damages;

2. awarding TWEC pre- and post-judgment interest on the damages caused to Priddis as a result of the wrongful acts alleged herein; and

3. granting TWEC such other relief as this Court deems just and proper.

JURY DEMAND

The counterclaim-plaintiff, TWEC, demands a trial by jury on all issues so triable.

Dated: September 8, 2005

BOIES, SCHILLER & FLEXNER LLP

By: ______________________

Philip J. Iovieno (Bar Roll #506390)
J. Matthew Donohue (Bar Roll #511490)
BOIES, SCHILLER & FLEXNER LLP
10 North Pearl Street, 4th Floor
Albany, New York 12207
(518) 434-0600

EXHIBIT M

ORIGINAL

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

* *

PRIDDIS MUSIC, INC., Plaintiff,	)
	)
- against-	) CA # 05-CV-0491
	)
TRANS WORLD ENTERTAINMENT, INC.,	)
Defendant.	)

* *

CONFIDENTIAL

EXAMINATION BEFORE TRIAL OF TRANS WORLD ENTERTAINMENT, INC., the Defendant, by and through its representative, KATHY FESTA, conducted pursuant to Notice at the law offices of McNAMEE, LOCHNER, TITUS & WILLIAMS, 677 Broadway, Albany, New York, on August 25, 2006, commencing at approximately 9:10 a.m. before Lynne Billington, a Shorthand Reporter and Notary Public in and for the State of New York.

A P P E A R A N C E S:

FOR THE PLAINTIFF:
McNAMEE, LOCHNER, TITUS & WILLIAMS
677 Broadway
Albany, NY 12207
By: Kenneth Gellhaus, Esq.

FOR THE DEFENDANT:
BOIES, SCHILLER & FLEXNER
10 North Pearl Street
Albany, NY 12207
By: Robert C. Tietjen, Esq.

Q (By Mr. Gellhaus) Miss Festa, my questions today, I will seek to state them to you as the witness on behalf of Trans World Entertainment Corporation. These questions will primarily relate to the company's position relative to its policies and procedures for the return of Karaoke product, as this case is about, Karaoke products, and also in connection with a counterclaim placed in this matter by Trans World against my client, Priddis.

Once again, if I ask any question that you don't understand, let me know that, or if you wish me to rephrase it, I can do that. If you need to take a break, let me know that, and so long as we're not in the middle of a question that has yet to be answered, we can do that, as well.

A Okay.

Q First I'd like you to tell me if you're aware of the term "anticipated return" as used in connection with Karaoke purchases from Priddis Music.

A Yes.

Q What does anticipated return mean?

A It is a -- the buyer and the vendors, they review what the on-hand inventory, the slow-moving inventory, and they decide what to pull back from the field. At that point, the anticipated return is deducted from the payment of the vendor.

Q And how was that determination reached by the buyer?

A They'll do a review, I'm not sure if it's monthly or quarterly, and they'll talk to the vendor and understand what's not moving. They'll look at sales reports and basically decide what needs to be recalled.

Q So, is a number assigned, then, by the buyer from time to time which represents an anticipated return number?

A It's the agreed upon number.

You know, when they're looking at slow-moving inventory, they know how many pieces they have on hand, at what cost, and that determines the number.

Q Right.

When you say "agreed upon number," with whom is that number agreed?

MR. TIETJEN: Object to form.

When you say "number," are we talking number of units or --

MR. GELLHAUS: Financial number. Dollar number.

THE WITNESS: I'm sorry. Can you repeat your question?

MR. GELLHAUS: Would you read the question back, please?

(The information requested was read back by the Court Reporter.)

THE WITNESS: It's agreed upon by -- between the vendor and the buyer at Trans World.

Q (By Mr. Gellhaus) Okay.

And you are aware, are you not, that the life of this vendor/vendee relationship ran approximately fall 1999 through spring of 2004? Is that a rough approximation that you can agree with?

A Yeah.

Q Okay.

A Yes.

Q Over that time period, who were the responsible buyers of Trans World Entertainment Corporation who were charged with the responsibility of determining the anticipated return number?

A Russ Kellar, who is no longer with the company; Sara Gleason, who was his assistant; Mark Berrada; who is the divisional merchandising manager; and originally Julie Landau, who is no longer with the company, either.

Q And is Mark Berrada still with the company?

A No.

Q And when did he leave the company?

A You know, it was probably about five months ago. I can't be sure. Honestly, I don't know.

Q And do you know what company he left for?

A No, I do not.

Q Okay.

Do you know if he's still in the area?

A I believe he still lives in this area.

Q Okay.

Now, in connection with Ms. Sara Gleason, who you identified -- and I believe she's now known as Miss Cunningham. Is that correct?

A Correct.

Q -- for what period of time was she responsible for determining the anticipated return number?

A She was Russ Kellar's assistant from -- I would say in 2003 until he left Trans World in 2004.

Q So, is it fair to say that her time frame in which she was responsible for determining the anticipated return number was a relatively short period?

A Yes.

Q I think you testified a moment ago that the anticipated return number was determined from time to time, but not every month. Is that correct?

A Correct.

Q Is there a written policy for when that number has to be determined?

A There is no policy.

Q Do you have buyers make that determination, then?

A The buyers look at sales reports weekly. They determine at that point when a discussion needs to be made with the vendor.

Q And is it your testimony that Trans World believes that the anticipated return number is an agreed upon number with the vendor? Is that correct?

MR. TIETJEN: Object to form.

THE WITNESS: I would say yes. They -- you know, the anticipated returns is a discussion about slow-moving inventory. They need to speak with the vendors on that. So, I would say yes.

Q (By Mr. Gellhaus) I'm going to show you a document marked for identification as Plaintiff's Exhibit 3. You've seen that document before today, correct?

A Correct.

Q And specifically, eight days ago, you testified in connection with this document as a fact witness for Trans World, correct?

A Yes.

Q Would you agree that the third column entitled "Check Dollars" is the column showing anticipated returns for the Priddis/Trans World relationship?

A No. The -- no. Check dollars is the amount of the actual check.

Q Okay.

Which is the column showing the anticipated returns?

A RET dollars.

Q Okay.

Now, if you look at the column, you can see that from 1999 through 2001 there are no dollar figures put into the anticipated returns column, correct?

A Correct.

Q What does that suggest to you?

MR. TIETJEN: Object to form.

THE WITNESS: Looks as though between those dates, a couple of things. Either we were just starting up business and we were stocking our stores in some of that time frame. The other is that inventory was moving.

Q (By Mr. Gellhaus) Okay.

Would it be fair to say that inventory was slowing down in the fall of 2001 and into 2002, given that there appear to be some periodic anticipated return dollars in that column?

MR. TIETJEN: Object to form.

THE WITNESS: I can't really say that.

I do know in some of these -- if I look at some of these dates, could be anticipated holiday returns. So, I can't be -- you know, answer that specifically.

Q (By Mr. Gellhaus) Okay.
Now, when you say "anticipated holiday returns," what does that mean?
A We return our -- what we buy for our Christmas product for seasonal, we return after the season.
Q That which is not sold is returned early in the next year?
A Yes.
Q Is there a company policy as to the time frame within which the holiday return should take place?
A No, there's not.
Q Recalling your testimony from the other week, you've been an employee of Trans World since 1998?
A -7.
Q -7.
In that time period, you have some experience with the time period in which the vendors usually -- I'm sorry, in which Trans World usually returns holiday product that doesn't sell, correct?
A Correct.

MR. TIETJEN: Object to form.

THE WITNESS: If you were considering that what we were wanting to return was Christmas product. But I doubt that.

The 85,000 was either slow-moving inventory that was regular Karaoke or summer seasonal Karaoke or -- you know, it could have been something to that nature. I doubt it was Christmas Karaoke. You know, I can't be sure as to what the product is exactly.

Q (By Mr. Gellhaus) Okay.

But it would be fair to say that the most likely reason for a return would be unsold holiday product, correct?

MR. TIETJEN: Object to form.

THE WITNESS: No.

Q (By Mr. Gellhaus) Okay. What would some of the other reasons be for returns?

A Again, our seasonal product, there would be slow-moving inventory is one of the main factors of a return, closed stores when they send their product back, special orders that are done at the store.

Q You mentioned closed stores in sending their product back. Can you tell me how many Trans World

Entertainment stores closed in the year 2000?
MR. TIETJEN: Object to form.
THE WITNESS: I really can't.
Q (By Mr. Gellhaus) Can you tell me how many Trans World Corporation stores closed in any of the years 1999 through 2003?
A I can't be sure. We close and open stores. You know, that goes on constantly. So, I could not tell you that.
Q Well, having been with the company for approximately nine years, can you tell me if the number of stores that opened and closed is larger than 20 --
MR. TIETJEN: Object to form.
Q (By Mr. Gellhaus) -- per year?
A I can't -- I can't be sure. There are, I'm sure, statistics. I just don't know them.
Q Now, with respect to the anticipated return number itself, I believe you testified a few minutes ago that that number's an agreed upon number with the vendor. Is that correct?
MR. TIETJEN: Object to form.
THE WITNESS: Yes.
Q (By Mr. Gellhaus) How does the process work

by which the Trans World buyer conveys the number to the vendor and obtains the vendor's approval for the number?

A Typically what a buyer will do, they're in constant communication with their vendors. As they look at sales reporting, and I believe send sales reporting and on-hand inventory reporting to the vendor, they have conversations, and at that point they decide.

Q They have conversations and they decide on the actual dollar figure?

MR. TIETJEN: Object to the form.

THE WITNESS: They decide on what product is slow-moving, what should be recalled, what isn't working in a particular store in an area. So, that's when they decide what can come back.

Q (By Mr. Gellhaus) Okay.

Now, when the buyer determines at a given point in time that there will be an anticipated return number, at some point the buyer for Trans World needs to convey that number to somebody in vendor relations so that that number can be factored into the payables account. Is that correct?

MR. TIETJEN: Object to the form.
And, again, the number is a dollar number?
MR. GELLHAUS: The dollar number.
THE WITNESS: Yes. The buyer gives that figure to vendor relations.
Q (By Mr. Gellhaus) Because the buyer, himself, or herself, does not have the authority to actually take that number and apply it against the financial account of the vendor. Is that correct?
MR. TIETJEN: Object to form.
THE WITNESS: Yes. Exactly.
Q (By Mr. Gellhaus) Okay.
Prior to conveying the number, the financial dollar amount of the returns to vendor relations, what is the usual practice for Trans World buyers insofar as obtaining the approval of the vendor for the number?
A Again, that is usually just a conversation either on the telephone or e-mail.
Q Okay.
Have you had an opportunity in this case to review Trans World's records to determine whether there were written approvals given by my client to your company, Trans World, with respect to any of the

MR. TIETJEN: Object to the form.

THE WITNESS: I can't. That's old.

It's timing, it's not -- you know, a recall can go out and take -- depending on store compliance, can take quite awhile to get back. So, no, I can't.

Q (By Mr. Gellhaus) Well, during each time period in between a prior payment and a new payment, a series of returns would come in, would be sent by Trans World to Priddis, correct?

A That's the normal course of business, returns are constant, yes.

Q All right.

So, what I'm having difficulty understanding is why the dollar amount of the actual returns being sent back would not be deducted from the anticipated return number so as to give a net number.

Looking at the 85,000, the first one, if the next regular payment period was January 31st, 2002 and if, in between that time, there had been $40,000 of returns by Trans World -- you with me so far? -- then that would net to a credit back of 45,000 because although 85,000 is anticipated, only 40,000 returns actually happened from the point of the debit to the

Exhibit 39, as well as the codes that appear on the second page, the codes such as CBA, CBAR, et cetera, those are not referred to in Plaintiff's Exhibit 20, correct? The Vendor Relations Agreement?

MR. TIETJEN: Objection to the form.

THE WITNESS: The codes are not in the -- in 20. Exhibit 20.

Q (By Mr. Gellhaus) Okay.

And the words "100 percent returns" that you're referring to in Plaintiff's Exhibit 20, there's no reference there to anticipated returns, correct?

A It does not reference the explanation of anticipated returns, no.

Q Okay.

On behalf of Trans World, describe Trans World's understanding of the line of the Vendor Relations Agreement that you reference that states "100 percent returns."

A "100 percent returns with no exceptions." That we can return product as necessary.

Q Okay. Define "necessary."

A Slow-moving product, holiday returns, closed stores. There is quite a few reasons why we would return product. Those are just three of the examples. There's no restrictions, though, when we can return product, according to this.

Q So, it would be the company view that any product ordered could be returned --

A Yeah.

Q -- correct?

A If it's 100 percent return with no exceptions, all product, if it -- has to be -- will be returned. All product ordered.

First, we want it to sell because that's the type of business we're in. If it is left behind because it is slow-moving or it is Christmas product and it's July or whatever, that product needs to be returned, and that's what 100 percent returnable means.

Q Does it also mean in the view of the defendant that product can be returned at any time after it is ordered?

MR. TIETJEN: Objection to the form.

THE WITNESS: Well, I mean, it would have to be returned at any time after it's ordered.

Q (By Mr. Gellhaus) I understand that.

A Okay.

Q One presupposes the other.

But is it the company view that product can be returned, a particular Karaoke DVD product, at any time after it's ordered, whether that be 60 days, 180 days, at any time that it desires?

A It can be returned at any time.

Q So, it could be returned several years after it's ordered?

A As long as it's in our on-hand inventory, correct.

Q Okay. Now, you've identified several reasons for a return being necessary, to use your word "necessary." Are there any reasons for returns that are unnecessary? That are simply on somebody's whim?

MR. TIETJEN: Objection to the form.

THE WITNESS: No.

We put product in the stores to sell it. If it doesn't sell, it costs us money to let it sit there, and we could be putting other product in there to sell. So, the main idea is to put product in that sells. If it doesn't, we have to remove it from the store.

Q (By Mr. Gellhaus) So --

A There isn't, you know, just someone saying, "I feel like just returning a hundred units to Priddis today." That doesn't happen.

Q But in theory, with the description you've given me, Priddis could deliver a million pieces of product to Trans World, and Trans World would never have to pay for a single one if it returns those million pieces, correct?

MR. TIETJEN: Objection to the form.

THE WITNESS: That would never happen. That would never happen.

Q (By Mr. Gellhaus) How do you know that?

A I know that because when we purchased product from a vendor, we immediately put it into the stores. There are sales that happen immediately. We wouldn't just take the product and return it. It would cost us more money to do that than to not sell a piece of Priddis product and just return it and not pay them. That doesn't work for us. That's not how we do business.

Q But your company's interpretation of the policy is that, in theory, it has the right to order a million pieces of product and then return all one million pieces, correct?

A That is the translation of both Priddis and Trans World in this agreement.

Q I'm asking you with respect to your presence here on behalf of Trans World.

A Yes. We have 100 percent return. So, we could return all that we purchase.

Q And never pay for any of it, correct?

A Well, I don't really understand what you mean by that because we pay for invoices as they become due.

Q Okay.

A If we return, we deduct that from the payment, the payable.

Q And you also make deductions for returns that haven't happened yet, correct?

MR. TIETJEN: Objection to the form.

THE WITNESS: The anticipated returns?

Q (By Mr. Gellhaus) Yes.

A Yes. We do make deductions but we pay them right -- we get whole the next month.

Q But in the month that the check is cut, there is a deduction that's not listed on that agreement, correct?

A Correct.

A So items wouldn't age out and then they were really hard to research later on. If we could do cleanup checks, which is sometimes what we have to do, if a payment isn't due, everything keeps rolling, and they could apply their checks. And items do drop off on them and new items come on and -- it's just in order to make it a lot easier keeping both accounts clean.

Q And there's a reference in your e-mail to Mr. Kellar concerning obtaining their agreement, Priddis' agreement, to send a check in this process. What is that referring to?

A Well, one of the things I mentioned to Russ was that the inventory value was extremely high. Items just were not selling. It was very slow-moving. Basically what I told him was they, both Priddis and Russ, wanted to try to clean this up. But, however, we were definitely going to end up in a debit balance, which I would have been more comfortable with if Priddis had agreed to send us a check at that time and send something in writing to state that.

Q If Priddis agreed to send a check in --

A When we were in a debit balance with them.

Q So that your vendor -- you were asking him to ask your vendor, who is supplying product to the company, to agree that in some circumstances the vendor should send a check to you, the vendee?

MR. TIETJEN: Objection to the form.

THE WITNESS: When they owed us money, yes.

Q (By Mr. Gellhaus) Even though it was in the conduct of purchasing product from them?

MR. TIETJEN: Objection to the form.

THE WITNESS: It doesn't matter. We paid for the product. But there was so much product, once a return happened, they would owe us money.

Q (By Mr. Gellhaus) Do you know if a document was ever signed, in particular, in response to your e-mail suggestion to Mr. Kellar along the lines that you asked?

A I believe no. In this -- ending of this e-mail trail, Rick said that he wouldn't be able to do that.

Q Okay.

Is it fair to say that the summary of this e-mail indicates that at that time, April 2003, the inventories were high?

MR. TIETJEN: Objection to the form.

THE WITNESS: Well, yes. According to these e-mails, we were talking high inventory levels.

Q (By Mr. Gellhaus) Would that be a time when there was a need to make inventory returns because of the inflated inventory?

MR. TIETJEN: Objection to the form.

THE WITNESS: At this time of the relationship, we were looking to do anything we could to make it work for both parties. We had paid for all the product that we purchased. However, the returns, because of the slow-moving inventory, outweighed everything that we paid.

Q (By Mr. Gellhaus) How long had inventory been slowly moving at the time that you sent the e-mail in April?

A I can't give you a time frame. I know at the end of 2002, beginning of 2003 is when we saw it decline. Couldn't give you an exact date.

Q But is it your testimony this was still at a point where you were trying to, I may be using the wrong phrase, but make a relationship work or keep the relationship going?

warranted by the net sales, correct?

A That's what it says, yes.

Q Do you recall this issue when it arose in March 2002?

A No. I don't recall it. But, you know, obviously it did.

Q Do you recall receiving an e-mail about the rack placement fee discrepancy?

A No. I'm sorry. There were other rack placement conversations, but I don't remember this exact one.

Q Well, what is the rack placement fee?

A That's basically a form of cooperative advertising; that there was a separate agreement signed that Priddis would give Trans World 10 percent of purchases for placement.

Q 10 percent of purchases were used or constituted a rack placement fee. Is that what you're describing?

MR. TIETJEN: Objection to the form.

THE WITNESS: Yes. That is what they had agreed upon for their cooperative advertising.

Q (By Mr. Gellhaus) So, in theory, was the

10 percent used for some form of advertising?
A There's different forms of advertising. They're all under the cooperative advertising umbrella. Placement is definitely one of them.
Q What do you mean by that, that placement is a form of advertising?
A Deciding where to put product.
If you have -- if the vendor has given funds to be placed at the front of the store, that's considered cooperative advertising.
Q So, is it your testimony that Trans World charges an extra amount to get a better placement, physical placement position within the store for the product of its vendors?
MR. TIETJEN: Objection to the form.
THE WITNESS: It's an industry standard that all the vendors give cooperative advertising dollars, and it's negotiated, you know, individually. Placement consists of, you know, either at the cash wrap, you know, on a new release wall in the front of the store, in a fixture. It really depends on what they decide.
Q (By Mr. Gellhaus) Is the 10 percent fee

standard in the industry?

A That's negotiated on a case by case basis or vendor by vendor basis.

Q Okay. So, it varies between vendors?

A Correct.

Q Okay.

And is that amount adjusted from time to time between the parties?

A At times there'll be new agreements drawn up or --

Q Was the specific percentage in the case of the relationship with Trans World and Priddis a percentage that stayed the same throughout the relationship?

A I believe it did vary throughout the relationship.

Q Do you know from what figure to what figure?

A I believe -- I would love to see the forms, but it went from 10 to 16 and then to 15.

Q Do you know when the amount changed from 10 to 15 to -- let me restate that, from 10 to 16 to 15, the particular time frames during which each of those percentages would have applied?

A I don't know exactly. But according to the forms that I don't have in front of me, I believe the 10 changed to 16 maybe later, 2002, and then it changed to 15 later, 2003.
Q Were you involved in any of the discussions that led you to the adjustment of the rate?
A No.
Q No.
But you necessarily, as vendor relations supervisor and later manager, needed to know those percentages for the purposes of making adjustments to the payables calculation. Is that correct?
MR. TIETJEN: Objection to the form.
THE WITNESS: Actually we held the additional letters and different items that were agreed upon with the contracts, original contracts with the cooperative advertising. Those deductions actually came from the buyer.
Q (By Mr. Gellhaus) In other words, the buyer made the deductions in what form?
MR. TIETJEN: Objection to the form.
THE WITNESS: What do you mean?
Q (By Mr. Gellhaus) I'm not sure what you mean

by the buyer made the deductions. Can you explain that?

A Well, early on, they would just write up the deductions. I mean, of course, accounts payable would take the deductions.

Q So, the buyer would write up the deductions?

A After receiving confirmed purchases from Priddis for most cases.

Q Would the buyer be writing up the deductions in so far as they would appear on orders, or how would they be written up?

A I believe we brought some for you to look at today.

They would be written up on actual charge back forms, accounts payable charge back forms.

Q Okay.

MR. GELLHAUS: Off the record a moment.

(Discussion off the record.)

Q (By Mr. Gellhaus) Miss Festa, you've been talking about the rack placement fee. It's also called a co-op advertising fee or co-op allowance fee,

correct?
A Correct.
Q Is that an amount that -- we've talked about different percentages for that amount, correct, that apply to different time periods of the relationship.
A Correct.
Q Is that an amount that was suggested to Priddis Music by Trans World, or how was that percentage even determined?
MR. TIETJEN: Objection to the form.
THE WITNESS: That percentage was determined through the negotiations between the buyer and Priddis. I don't know exactly who suggested what percentage.
Q (By Mr. Gellhaus) Okay.
Are you familiar at all with the kind of factors that are considered in such negotiation to determine that rack placement fee?
A No. That would be more for a buyer to determine that. I really don't know what's considered.
Q Would you have any idea what events would lead the rack placement fee to be adjusted to a higher percentage?

MR. TIETJEN: Objection to the form.
THE WITNESS: Well, as you noticed throughout, according to those letters, the programs were renegotiated every so often. Not the actual terms, but the programs that they were dealing with. And at that point, I'm sure the buyer found it necessary to raise the placement fee.
Q (By Mr. Gellhaus) So, the final decision on the placement fee is the buyer's?
MR. TIETJEN: Objection to the form.
THE WITNESS: And, of course, agreed upon with Priddis, yes.
Q (By Mr. Gellhaus) But it would, more or less, be to the buyer's advantage to maximize the amount of the rack placement fee, correct?
MR. TIETJEN: Objection to the form.
THE WITNESS: Well, I don't really know how to answer that. I mean, you know, they don't --
Q (By Mr. Gellhaus) Well, the rack placement fee is a deduction off how much is going to be paid by the plaintiff in the case to Trans World. So, it's to the benefit of Trans World if that rack placement fee is set as high as the buyer for Trans World can

negotiate, correct?

MR. TIETJEN: Objection to the form.

THE WITNESS: Well, yeah. It's vendor funding for whatever, cooperative advertising, and they're going to negotiate as high as they could possibly go, as long as the vendor agrees, of course.

Q (By Mr. Gellhaus) And when we say it's vendor funding for cooperative advertising, the cooperative advertising is, in part, location within the particular physical store, correct?

A That's part of it, yes.

Q That's part of it. What are the other parts of it?

A There's advertising in freestanding inserts or in magazines that are inside the store, radio spots, any type of advertising, what we call ROP or POP advertising.

Q ROP and POP?

A It's really not -- just run on -- it's newspaper or radio advertising.

Q And is this cooperative advertising fee also considered a marketing fee? Or within the terminology used by Trans World, is there a separate fee that it